

Service Date: February 4, 1994

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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IN THE MATTER of the Petition of	)	TRANSPORTATION DIVISION
Burlington Northern Railroad	)	
Company to Discontinue Agency	)	DOCKET NO. T-93.115.RR
Services at Glasgow, Montana.	)	ORDER NO. 6277

**FINAL ORDER**

**APPEARANCES**

**FOR THE APPLICANT:**

Jon Metropoulos, Browning, Kaleczyc, Berry & Hoven, 139 Last  
Chance Gulch, P.O. Box 1697, Helena, Montana 59624

**FOR THE COMMISSION:**

Tim Sweeney, Staff Attorney, 1701 Prospect Avenue, P.O. Box  
202601, Helena, Montana 59620-2601

Wayne Budt, Transportation Division, 1701 Prospect Avenue,  
P.O. Box 202601, Helena, Montana 59620-2601

**BEFORE:**

DANNY OBERG, Commissioner and Hearing Examiner

**BACKGROUND**

1. Burlington Northern Railroad Company (BNRC or Applicant) applied to the Montana Public Service Commission (Commis-

sion) on August 19, 1993 for authority to discontinue agency services at Glasgow, Montana.

2. The Commission properly noticed BNRC's application and held a public hearing on November 4, 1993 at the Lodge Room, Elk's Club 309, Second Avenue South, Glasgow, Montana.

3. BNRC stipulated to a final order and no briefs were filed.

#### SUMMARY OF TESTIMONY

##### Testimony of Applicant

4. Tom Zack, BNRC's Manager of Customer Service in Great Falls, testified on the operations of a central agency. He indicated that the Great Falls Central Agency currently serves the Glasgow area and is responsible for car orders, car releasing, billing, and other functions including car problems. He also noted that shippers can communicate with the central agency using telephones, facsimile transmissions and computer links.

5. Mr. Zack presented copies of questionnaires that were sent by BNRC to Glasgow-area shippers. The responses indicated that the level of satisfaction with service provided by the Great Falls Central Agency ranged from "very well" to "adequately." None of the shippers indicated that service was poor.

6. Based on his knowledge and experience, Mr. Zack concluded that the Glasgow Agency was not necessary to serve the shipping public's needs.

7. Steven Pfiffer, BNRC's trainmaster for the Glasgow area, testified on the train operations serving Glasgow. He indicated that train crews perform a number of customer-related services previously provided by the station agent. He also testified that he personally contacts all the shippers and often has weekly contact with some. He concluded that the station agent was no longer needed to serve the shipping public since the train crews and the Great Falls Central Agency are able to provide all the necessary customer services.

8. Paul Froelich, Senior Cost Analyst for BNRC, testified on the Accounting Exhibit prepared and submitted to the Commission prior to the hearing. Pages 1-5 of the Exhibit, a computer generated report on carload commodity and traffic statistics for the years 1990 through 1993 (January-June), showed that cars forwarded and received at Glasgow, Nashua and Hinsdale totaled 511 in 1990, 560 in 1991, 828 in 1992, and 500 in 1993 (January-June). Pages 5-6 also presented these statistics in terms of average cars per month and per day. Page 7 presented a time study based on the number of units handled by the agency. Rev-

venues and expenses were analyzed on pages 8-9.

9. The data on page 8 indicated that net revenue for freight service at Glasgow was \$174,220 in 1990, \$172,641 in 1991, \$288,798 in 1992, and \$193,357 during the first six months of 1993. On cross-examination Mr. Froelich confirmed that the Glasgow agency was profitable.

#### Testimony of Public Witnesses

10. Mr. Dennis Cole, the BNRC Freight Agent assigned to the Glasgow Agency, testified that he agreed with BNRC's assertion that Glasgow Agency services are no longer needed. He stated that while he occasionally provides customer services to shippers, the Great Falls Central Agency was capable of providing the same services. In regard to services performed for Amtrak customers, which were limited to posting schedules, signing passes and sometimes providing notice of delivery to Amtrak Express (package) customers, he indicated that one of the clerical assistants assigned to the Glasgow Agency could perform these duties if necessary. Mr. Cole also testified that he does not provide any services affecting public safety.

11. Jerry Doornek, appearing on behalf of the Harvest States Cooperative Grain Elevator (Harvest States), testified

that Harvest States has no concerns regarding the provisioning of customer services through the Great Falls Central Agency. However, he stated that Harvest States would have concerns if the central agency services were transferred to an out-of-state location such as Fort Worth, Texas.

12. Mr. James T. Mular, State Legislative Director for the Transportation and Communications Union, testified in opposition to the application. He argued that the Glasgow Agency was already serving as a central agency pursuant to Commission Order in Docket No. T-6604 and that service should not be further diluted.

He further argued that BNRC had acted illegally by effectively transferring Glasgow Agency duties to the Great Falls Central Agency prior to the filing of its application with the Commission. Mr. Mular also presented a BNRC Compass Points announcement (dated July 20, 1992) indicating that all agency functions would eventually be transferred to a facility in Fort Worth, Texas.

#### DISCUSSION, FURTHER FINDINGS AND ANALYSIS

13. Under Section 69-14-202(1), MCA, a railroad operating in the state of Montana shall maintain such agency facilities for shipping, freight delivery and accommodation of passengers as

were maintained and staffed on January 1, 1987. However, if the railroad demonstrates to the Commission, following an opportunity for public hearing, that a facility is not required for the public convenience and necessity, then the Commission shall authorize the closure of such facility. Section 69-14-202(2), MCA.

14. In determining public convenience and necessity, the Commission must weigh and balance facts and testimony presented at the hearing including facts and testimony presented by the general public. Id. The Commission shall also consider the existing burdens on the railroad, the burdens placed upon the shipping and general public if the application is granted, and any other factors the Commission considers significant to the provision of adequate rail service. Id.

15. The Commission notes that BNRC's application seeks to discontinue agency services at Glasgow and transfer such services to its Great Falls Central Agency. The application does not seek to close the depot facility. Therefore, the Commission now considers only whether BNRC should be allowed to discontinue and transfer agency services. BNRC cannot close the depot facility without Commission approval, and such approval would have to be the subject of a separate application.

16. BNRC's application contends that the Great Falls Cen-

tral Agency is fully capable of meeting shipper needs and, therefore, the Glasgow Agency is no longer needed. No shipper testified in opposition to BNRC application. In fact, Mr. Doornek, the only shipper to appear at the hearing, indicated that Harvest States is being adequately served by the Great Falls Central Agency.

17. The only witness to oppose BNRC's application was Jim Mular of the Transportation and Communications Union. Though Mr. Mular argued that the Glasgow Agency, as a central agency, should not be allowed to close, the weight of the testimony clearly supported BNRC's assertion that public convenience and necessity are adequately served by the Great Falls Central Agency. Mr. Mular simply did not present any evidence that the public convenience and necessity would be compromised by discontinuing Glasgow Agency services.

18. However, Mr. Mular's testimony did raise a valid question concerning the legality of BNRC's transfer of agency services from Glasgow to Great Falls. Section 69-14-202, MCA, currently requires that a railroad obtain Commission approval before closing, consolidating or centralizing an agency. BNRC historically has sidestepped this requirement by first transferring local agency duties to a central agency, then stripping the local

agent of any responsibilities, and finally applying to the Commission for permission to close the local agency. The end result is that a local agency is de facto closed, consolidated or centralized before BNRC even files an application with the Commission.

19. The Commission will no longer tolerate this course of conduct. Before agency services can be transferred, whether it be through consolidation or centralization, BNRC must seek approval from the Commission. This requirement applies whether the services are based in a local or central agency. In this regard, the Commission is mindful that BNRC plans to consolidate all agency services and functions into a single facility located in Fort Worth, Texas. If BNRC were allowed to continue its present strategy all Montana agency functions would be effectively transferred to Texas without a single application being filed with the Commission.

20. It is not the Commission's intention to present obstacles to the modernization of BNRC's operations. However, the Commission has a statutory obligation to ensure that the public convenience and necessity is not compromised by any closing, consolidation or centralization of BNRC's shipping facilities. See § 69-14-202, MCA. Therefore, in order to ensure that agency



functions are not prematurely transferred the Commission orders that BNRC provide documentation of all agency functions and duties as they existed on January 1, 1987. This documentation should cover all agencies, central and local, in operation on the service date of this order. The Commission further orders that all future applications for closure, consolidation or centralization under § 69-14-202, MCA, include documentation of all agency services and duties as of the date of the application. Such documentation will assist the Commission in evaluating whether agency services or duties have been transferred without Commission approval.

21. The Commission is also aware that certain local and central agency functions have already been transferred to Fort Worth. BNRC is ordered to supply the Commission with a list of all local and central agency functions which are now performed in Fort Worth or other locations.

22. That said, the evidence in this case does support the granting of BNRC's application to discontinue its Glasgow Agency services. There was no shipper opposition and there appears to be no adverse effect on the public convenience and necessity. It is so ordered.

CONCLUSIONS OF LAW

1. The Public Service Commission has jurisdiction over the parties and matters in this proceeding pursuant to Title 69, Chapter 14, MCA.

2. The Commission has provided adequate notice and opportunity to be heard to all interested parties in this matter as required by Title 2, Chapter 4, MCA.

3. The Glasgow Agency is not required to serve the public convenience and necessity as defined by § 69-14-202, MCA.

4. The Commission shall require employee protection before granting an application to discontinue agency services. Section 69-14-1001, MCA.

#### ORDER

NOW THEREFORE IT IS ORDERED that Burlington Northern Railroad Company's application to close the agency at Glasgow, Montana is Granted.

IT IS FURTHER ORDERED that Burlington Northern Railroad Company shall provide employee protection.

IT IS FURTHER ORDERED that Burlington Northern Railroad Company provide documentation of all agency functions and duties as they existed on January 1, 1987.

IT IS FURTHER ORDERED that all future Burlington Northern

Railroad Company applications for closure, consolidation or centralization under § 69-14-202, MCA, include documentation of all agency services and duties as of the date of the application.

IT IS FURTHER ORDERED that Burlington Northern Railroad Company supply the Commission with a list of all local and central agency functions which are now performed in Fort Worth or other locations.

IT IS FURTHER ORDERED that all objections and motions made during the hearing in this Docket that were not ruled on are denied.

Done and Dated this 18th day of January, 1994 by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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BOB ANDERSON, Chairman

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BOB ROWE, Vice Chairman

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DAVE FISHER, Commissioner

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NANCY MCCAFFREE, Commissioner

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DANNY OBERG, Commissioner

ATTEST:

Kathlene M. Anderson  
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.